



American Model United Nations International

THE INTERNATIONAL COURT OF JUSTICE

The International Court of Justice

Slovakia v. Hungary
Hungary v. Slovakia

International Court of Justice
19 November 2001

JUDGEMENT OF 19 NOVEMBER 2001

JUDGEMENT

Present: President Travis of Saudi Arabia, Justice Higman of Japan, Justice Mourning of Colombia, Justice McIntosh of Rwanda, Justice Lusk of Belgium, Justice Suknidze of Argentina, Justice Adly of Mauritius, Justice Jin of China, Justice DeLay of Venezuela, Justice Tague of Germany, Justice Brown of Luxembourg, Justice Nelson of Germany.

By a vote of 7 to 5, the Majority of the Court finds the following:

For: Justice Mourning of Colombia, Justice Lusk of Belgium, Justice Suknidze of Argentina, Justice Adly of Mauritius, Justice Jin of China, Justice Brown of Luxembourg, Justice Nelson of Germany.

Against: Justice Travis of Saudi Arabia, Justice Higman of Japan, Justice McIntosh of Rwanda, Justice DeLay of Venezuela, Justice Tague of Germany.

The Hungarian People's Republic (Hungary) and Slovakia (successor of Czechoslovakia) brought the claims against each other before the International Court of Justice.

The Court will begin by addressing the issue of validity of the Treaty of 16 September 1977 between the Hungarian People's Republic and the Czechoslovak People's Republic concerning the Construction and Operation of the Gabčíkovo-Naymaros systems.

In 1993, Czechoslovakia was divided into two separate states, the Czech Republic and Slovakia, and Slovakia, as a successor state, recognizes itself as a party of this Treaty.

Section I

I. The Court will begin by addressing the issue of validity of the Treaty and International Law.

The International Community and the United Nations recognized Hungary at the time of the signing of the Treaty as sovereign. Although we take into consideration the arguments of Hungary regarding the influence of the Soviet Union on Hungary's foreign policy, including reference to the Brezhnev Doctrine, there was no substantial evidence presented by Hungary to invalidate the Treaty in the eyes of the Court.

Hungary claims that until 1989 the Soviet Union had circumvented their self-determination in foreign policy. Historical facts have demonstrated that, on a number of occasions, Hungary has consistently impeded the celerity by which the Treaty [1983] was to be implemented. Therefore the Court is of the opinion that Hungary was in full capacity to initiate negotiations with Slovakia with regard to the termination of the Treaty.

- II. Slovakia claimed that Hungary did not have legal latitude to suspend and abandon the works on the Nagymaros.

The text of the treaty did not envisage the possibility of the signatories unilaterally suspending or abandoning the work provided therein, or even carrying it out according to a new schedule not approved by the two parties.

The conduct of Hungary in 1989 can be interpreted as an expression of its unwillingness to comply with at least some of the provisions of the Treaty.

If the treaty were to be found valid by this Court – Hungary invoked the argument of state of necessity to justify its actions. State of necessity is one of the conditions which precludes State responsibility according to Article 33 of the Draft Articles on the International Responsibility of States therefore Hungary expressly admitted the violation of the Treaty in 1989. In the present case following basic conditions set forth in Article 33 of the Draft Articles are relevant: It must have been occasioned by an “essential interest” of the State which has committed the act; that interest must have been threatened by a “grave and imminent” peril; the act being challenged must have been the “only means” of safeguarding that interest; that act must not have “seriously impaired an essential interest” of the State towards which the obligation existed; the State which committed the act must not have “contributed to the occurrence of the state of necessity”. These conditions also reflect customary international law.

Environmental concerns of Hungary relate to essential interest of the State.

Hungary has requested postponement of the works due to the fact that ecological impact of constructing Gabčíkovo-Nagymaros system was not certain. However, Hungary has stated that drinking water resources in the area would have been affected. Hungary has been aware of the modalities of the project and of its possible consequences for a number of years, therefore “a grave and imminent peril” was not established.

Breach of the treaty by Hungary was not the only means of redressing the situation, as negotiations were under way which might have led to reviewing the project or changing the time-limits.

The acts of Hungary have not seriously impaired an essential interest of Slovakia, however Hungary has contributed to the occurrence of the state of necessity by not entering the treaty and not showing the willingness to terminate it.

Hungary was not entitled to suspend and subsequently abandon in 1989 the works on the Project and the breach of the Treaty may not be justified by state of Necessity.

Therefore, the Court finds that Hungary was in violation of the treaty in 1989.

- III. Slovakia further claimed that the Treaty was in force, however, after further review of the evidence the Court was convinced that Hungary had the right to terminate the Treaty in 1992 based on Slovakia’s violation of the Treaty. Based on Article 60 of the Vienna Convention on the Law of the Treaty, a material breach of the Treaty is a valid basis for termination of the Treaty by the other party (Article 60.1-60.3 (b)). The issuing of the construction permit for Variant C on 30 October 1991, which was a clear intention for unilateral actions, which violates bilateral agreements, evidences the breach of the Treaty by Slovakia.
- IV. For the further claims of Slovakia, we conclude that proceeding with Variant C as the provisional

solution was lawful; however, clear intention was shown at the time of the further implementation of Variant C. Subsequently, Slovakia unilaterally implemented Variant C, which is in violation of the Treaty and Helsinki rules on the Uses of the Waters of International Rivers, Articles 4 and 5.

Section II

- I. The Court finds in regard to the request for compensation by Slovakia that Hungary shall compensate Slovakia for damage sustained by Czechoslovakia and by Slovakia on account of the suspension and abandonment by Hungary of works for which it was responsible.

Dissents to Sections I and II as follows:

Justice Travis of Saudi Arabia

Justice DeLay of Venezuela

Submit the following dissenting opinion in the case of Slovakia v. Hungary and Hungary v. Slovakia.

Although we concur with part II of the court's opinion, with regard to the reparations for damaged caused by the undertaking of "Variant C" by Slovakia, I must dissent from part I, the ruling on the validity of the Treaty of 16 September 1977 between Hungary and Czechoslovakia.

It is my contention, based on general historical knowledge, that both parties to the treaty were under direct pressure from, or controlled by, the government of the USSR from the time this treaty was negotiated, signed, and ratified, until the fall of the Soviet Union in 1991 and Hungary's subsequent withdrawal from the treaty in early 1992. This provides at least two reasons to invalidate the treaty in relation to International Law.

1. In concert, the Breshnev Doctrine, which stated that the "Socialist Commonwealth" had the right to intervene as it saw fit to preserve socialism and insisted that no action "Should do harm either to socialism" in the country or to a party involved; the direct selection of the Hungarian Prime Minister by the Soviet government; the presence of large numbers of Soviet Troops in the country; and the memory of the brutal, Soviet crushing of the Hungarian Revolution of 1956, constituted a direct threat of force on the government of Hungary. This violates the Vienna Convention on the *Law of Treaties, Article 52—Coercion of a State by the threat or use of force*, which states, "A Treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations." Article 2, section for states, "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations." At the same time, a United Nations Conference on the Law of Treaties declared, "It is noted that the Conference 'solemnly condemns the threat or use of pressure in any form, whether military, political or economic by any state in order to coerce another state to perform any act relating to the conclusion of a treaty in violation of the principles of the sovereign equality of states and freedom of consent...'"¹
2. At this same time, the very fact of Hungary's Sovereignty, and subsequent right to enter into

¹ Hungary Memorial 2001 Slovakia v. Hungary and Hungary v. Slovakia pp.2

treaties, comes into question. The UN continued to recognize Hungary's sovereignty after the aforementioned events of 1956 despite the compromise of several aspects of said sovereignty: loss of self-determination, loss of control over own national policy, and the stationing of foreign troops on its land in time of peace, all of which demonstrated a loss of state autonomy. By this, Hungary was, in fact, not, by definition, sovereign, and therefore incapable of entering into treaties with any nation.

By both of these factors, the court should rule the treaty of 16 September 1977 to be invalid and all subsequent considerations in relation to said treaty to be moot.

Therefore, we dissent with the opinion of the Majority.

By unanimous opinion, the Court found the following:

I. In regards to Hungary's claims that Slovakia's implementation of 'Variant C' violated the Helsinki Rules on the Uses of the Waters of International River, specifically Articles 4 and 5:

Article 4 states, "Each basin State is entitled... to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin."

Article 5 states. "Relevant factors which are to be considered [in determining what is a reasonable and equitable share] include... the population dependent on the waters of the basin in each basin State."

The Court rules in favor of Hungary and orders reparations to be paid to Hungary by Slovakia in an amount to be determined by a commission of experts that will be chosen by the Court. This decision will be made no later than 19 November 2002. We also hold Slovakia responsible for returning the river to its preexisting course.

II. The Court also finds in favor of Hungary that the water of the river be directed back to the Hungarian side to be used by the Hungarian government.

President Travis of Saudi Arabia

Justice Higman of Japan

Justice Mourning of Colombia

Justice McIntosh of Rwanda

Justice Lusk of Belgium

Justice Suknidze of Argentina

Justice Adly of Mauritius

Justice Jin of China

Justice DeLay of Venezuela

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